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UBER TECHNOLOGIES, INC.
and OTTOMOTTO LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

WAYMO LLC,

Plaintiff,

v.

UBER TECHNOLOGIES, INC.,
OTTOMOTTO LLC; OTTO TRUCKING
LLC,

Defendants.

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER
TECHNOLOGIES, INC. AND
OTTOMOTTO LLC'S PRECIS IN
SUPPORT OF REQUEST TO FILE
MOTION IN LIMINE TO EXCLUDE
TESTIMONY AND OPINIONS OF
WAYMO EXPERT
LAMBERTUS HESSELINK ON TS 25**

Trial Date: December 4, 2017

REDACTED VERSION OF DOCUMENT FILED UNDER SEAL

Waymo technical expert Lambertus Hesselink has now signed four expert reports in this case containing a broad array of so-called “expert” opinions, many of which are nothing more than speculative conclusions of fact based on limited “evidence” that any common juror can understand and interpret. Pursuant to this Court’s November 7, 2017 order granting each side permission to file one additional motion *in limine* (Dkt. 2178), Uber will bring a motion in *limine* to exclude Dr. Hesselink’s saved development time opinions. As Uber will show in that motion, there is no basis for Dr. Hesselink to offer those misleading opinions.

Pursuant to the Court’s October 4, 2017 order that no new motions may be filed without the Court’s advance permission (Dkt. 1954), Uber seeks leave to file one additional motion *in limine* to exclude Dr. Hesselink’s opinions on Trade Secret No. 25 (“TS 25”). TS 25 claims [REDACTED] contained in three spreadsheets consisting of 98 pages total. Dr. Hesselink speculates that misappropriation of this extensive data occurred based on comparing less than a handful of snippets from two Uber documents to a few of the TS 25 [REDACTED] – such as [REDACTED] (Uber) to [REDACTED] (TS 25) – without applying any specialized knowledge of his own. Furthermore, Dr. Hesselink offers no evidence supporting his conclusion that Uber, in fact, used TS 25. The Court previously warned Waymo that such mismatched snippets would not suffice:

[REDACTED]

(Dkt. 1261, 8/16/17 Hr’g Tr. 108:20-23.) Waymo should not be allowed to put an expert’s stamp of approval on mere speculation based on grade-school comparisons of snippets – the jury can do its own comparisons. Dr. Hesselink’s improper opinions on TS 25 should be excluded.

I. DR. HESSELINK SPECULATES BASED ON SIMPLE COMPARISONS OF SNIPPETS AND FAILS TO APPLY ANY SPECIALIZED KNOWLEDGE

Dr. Hesselink speculates that Uber acquired through communications from Levandowski TS 25’s [REDACTED] based on simple comparisons of document snippets rather than any application of specialized knowledge. Dr. Hesselink identifies only a handful of phrases from two documents that “reflect this misappropriation”: (1) a single line from a

1 March 2016 email from former head of Uber ATG John Bares, and (2) a few fragments from
 2 John Bares' notes of a Jan. 12, 2016 conversation with Anthony Levandowski. (See Hesselink
 3 Opening Rpt. ¶¶ 106-115 (Uber excerpts in blue boxes below).) In each instance, Dr. Hesselink
 4 merely compares a short excerpt from an Uber document to some text from a Waymo
 5 spreadsheet, a simple comparison that does not apply any expert knowledge of the technology.

6 Notably, none of these snippets reference any of Waymo's claimed [REDACTED] even at
 7 the high level, let alone the specific [REDACTED]. As the Court may recall from inspecting
 8 Waymo's [REDACTED] spreadsheet at the August 16 hearing, Column A in the
 9 [REDACTED] tab contains a brief description of the [REDACTED] concept (e.g., [REDACTED]
 10 [REDACTED]), Column B contains [REDACTED]
 11 [REDACTED] and the
 12 [REDACTED], and Column C and other columns contain
 13 more detailed specifications. (See Dkt. 25-10, Jaffe Ex. 4 at 1 (Waymo excerpts in green boxes
 14 below); 8/16/2017 Hr'g Tr. at 93:2-24.) Waymo's 30(b)(6) designee on TS 25, Benjamin Ingram,
 15 admitted that the brief description in the Column A cell is not a trade secret. (Ingram Dep.
 16 197:20-200:9; see *id.*, at 198:9-15 ("[REDACTED]
 17 [REDACTED]")) This testimony
 18 is consistent with the Court's previous observation that the "totality" of Waymo's spreadsheets
 19 could be a trade secret, but the "titles" (e.g., [REDACTED]) are not. (8/16/17 Hr'g Tr.
 20 at 104:13-15, 108:10-15.)

21 Dr. Hesselink compares two excerpts from the Bares documents with the [REDACTED]
 22 [REDACTED] (see below – Uber excerpt in blue; Waymo [REDACTED] in green, relevant
 23 portions in red):

24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]

(Hesselink Opening Rpt. ¶ 106.) It is plain that this excerpt does not match Waymo's specifications, yet Dr. Hesselink concludes that [REDACTED]

[REDACTED] in John Bares's March 16 email conveyed information Levandowski "derived" from this TS 25 [REDACTED]. (Hesselink Opening Rpt. ¶ 106.) Dr. Hesselink also compared a [REDACTED] snippet in John Bares' January 12 notes to Waymo's [REDACTED]. (Hesselink Opening Rpt. ¶¶ 114-115 (Bares notes below).)

For each of these comparisons, Dr. Hesselink's report is devoid of any expert analysis beyond placing the text next to each other. This is not specialized knowledge; it is lawyer argument.

Dr. Hesselink's other comparisons fare no better. He argues that [REDACTED] in John Bares' January 12 notes (below, top) are "derived from" three Waymo [REDACTED]. (Hesselink Opening Rpt. ¶¶ 108-109.)

Dr. Hesselink also argues that [REDACTED] in John Bares's January 12 notes is derived from [REDACTED] in another Waymo [REDACTED] (Hesselink Opening Rpt. ¶¶ 110-111.)

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8 As a final example, Dr. Hesselink states that Mr. Bares's note that Levandowski [REDACTED]
9 [REDACTED] "provided information from TS 25 because
10 one of Waymo's spreadsheets indicates [REDACTED]
11 [REDACTED]" (Hesselink Opening
12 Rpt. ¶¶ 110-113.) As shown below, [REDACTED] is just a column heading in TS 25's [REDACTED]
13 [REDACTED] spreadsheet, not the actual [REDACTED].
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20 (*Id.* ¶ 113.)

21 These simple comparisons are *the entirety* of Dr. Hesselink's "analysis" of Uber
22 documents "reflecting" misappropriation. Though *none* of the Uber and Waymo snippets
23 actually match, Dr. Hesselink speculates that Levandowski must have been conveying details of
24 entire spreadsheets to Uber. He does not even dress up his conclusions by any pretense of
25 scientific methodology. This is just guessing about the facts, and usurping the role of the jury.
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1 **II. DR. HESSELINK OFFERS NO OPINIONS OR EVIDENCE ABOUT ANY USE OF**
 2 **TS 25 BY UBER**

3 Dr. Hesselink's misappropriation opinion on TS 25 should also be excluded because, in
 4 addition to the inadequacies of his opinion that Uber acquired the TS 25 information, he offers no
 5 evidence about any *use* of TS 25 information by Uber. Uber developed its own [REDACTED]
 6 under its Dragonfly project, and Dr. Hesselink admits that they do not match the TS 25 [REDACTED].
 7 (Hesselink Opening Rpt. ¶ 118.) He does not point to any other Uber [REDACTED] as matching
 8 Waymo's, or to any evidence that Uber used Waymo's [REDACTED] to design or test its LiDARs.
 9 Dr. Hesselink argues instead that Uber's Dragonfly [REDACTED] are too "simplistic," speculating
 10 that Uber would not have been able to develop Spider or Fuji without the "detailed" [REDACTED]
 11 from Waymo. (*Id.* ¶ 122.) But the proof is in the pudding. Dr. Hesselink has Fuji's beam
 12 patterns and was able to calculate how Fuji's beams would interrogate the road. (Dkt. 1456-3,
 13 Hesselink Decl. ¶¶ 31-33.) He could have shown whether Fuji's beams could place [REDACTED] on
 14 a [REDACTED], as in Waymo's [REDACTED] – but he provides no analysis of
 15 this kind whatsoever.

16 In his supplemental report, Dr. Hesselink points out that one of the TS 25 spreadsheets
 17 was found on Levandowski's Macbook, which was quarantined by Stroz in March 2016.
 18 (Dkt. 2061-1, 10/23/17 Nardinelli Ex. 1, Hesselink Suppl. Rpt. ¶ 16.) In his reply report,
 19 Dr. Hesselink admits that this spreadsheet was last accessed on January 4, 2016, *before*
 20 *Levandowski left Google*. But he argues that there are different ways in which Levandowski
 21 "could have" consulted this spreadsheet. (Hesselink Suppl. Reply Rpt. ¶ 18.) Whether
 22 Levandowski "could have" accessed the spreadsheet after leaving Google is a jury issue, and
 23 Dr. Hesselink's opinions on this subject are mere speculation.

24 Without any evidence that Uber ever used TS 25, Dr. Hesselink's opinion boils down to a
 25 comparison of a few snippets that do not match, and then pure speculation about
 26 misappropriation. Dr. Hesselink's testimony on TS 25 would have no probative value, invades
 27 the jury's province, and is highly misleading. Uber requests that the Court grant it leave to file
 28 one additional motion *in limine* to exclude Dr. Hesselink's opinions on TS 25.

1 Dated: November 10, 2017

MORRISON & FOERSTER LLP

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3 By: /s/ Michael A. Jacobs

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